Morning Session on the Transportation Infrastructure Finance and Innovation Act (TIFIA)

TIFIA Overview

David Seltzer, Senior Advisor for Innovative Finance, Office of the Administrator, provided an overview of the Transportation Infrastructure Finance and Innovation Act (TIFIA). He began his presentation by stating that TIFIA is intended to assist those projects which have some revenue generating potential, but need additional assistance from government. The foundation of the Federal-aid program will continue to be grant-based funding for non-revenue-generating projects. State Infrastructure Banks (SIBs) are intended to complement traditional transportation programs by allowing States to offer many types of credit assistance (e.g., direct loans and credit enhancement) to revenue-backed projects through revolving funds. SIBs, however, currently lack available resources to offer assistance to large-scale projects of national significance.

Mr. Seltzer stated that the strategic goal of TIFIA is to use credit rather than grants to help advance projects of national significance. The following types of projects will be eligible for assistance under TIFIA:

- Highways (Title 23);
- Transit Vehicles and Facilities (Title 49);
- Intercity Bus Vehicles and Facilities;
- Intercity Passenger Rail Vehicles and Facilities, including Amtrak and Maglev; and
- Publicly Owned Intermodal Freight Facilities on the National Highway System.

Mr. Seltzer noted that four major objectives of the Federal credit program are to fill market gaps, leverage Federal funds with private capital, manage Federal risk exposure, and assist projects that comply with governmental requirements. These four objectives are outlined below:

- *Fill Market Gaps.* The Federal Government can take a broader view of project benefits, accept a longer payback period, absorb less predictable cash flows, and accommodate liquidity constraints. The Federal Government presently provides credit assistance through a variety of national programs. The face value of credit assistance through these programs totals almost $1 trillion. TIFIA will place surface transportation into that universe of projects.

- *Leverage Federal Funds.* The Federal credit program will provide secondary and subordinate capital for up to one-third of project costs, reduce transactional costs (e.g., reserve requirements, administrative fees), draw upon direct or indirect users' willingness to pay, and accelerate project completion.

- *Manage Federal Risk Exposure.* Under TIFIA DOT will attract private co-investment to ensure market discipline, require a preliminary rating agency opinion, limit funding of credit assistance until the senior debt receives an investment-grade rating, and monitor the credit portfolio.

- *Comply with Governmental Requirements.* Projects receiving assistance under TIFIA must comply with Federal laws and regulations, including the National Environmental Policy Act, the Civil Rights Act, and the Uniform Relocation Act. Projects under TIFIA must also be Title 23 or Title 49 eligible, secure appropriate State/local approvals, and secure appropriate permits.

Mr. Bryan Grote, Program Development Coordinator, FHWA, provided an overview of the project evaluation and selection process, the types of assistance (direct loans, loan guarantees, and standby lines of credit) to be offered under the program, project financial requirements, and program funding.

Mr. Grote stated that to be eligible for assistance under TIFIA, projects were required to meet the following threshold criteria:

- Meet various governmental eligibility and compliance requirements.
- Cost at least $100 million, or 50 percent of a State's most recent annual Federal-aid apportionment ($30 million for Intelligent Transportation System projects).
- Be supported at least in part by user charges or other dedicated revenue sources.
- Submit an application to the DOT Secretary.

Projects meeting the initial threshold criteria would then be evaluated by the Secretary of Transportation based on:

- *Economic and Environmental Benefits.* The extent to which a project generates regional or national economic and environmental benefits that exceed costs.
- *Credit-worthiness.* The likelihood of the credit instrument being supportable by project revenues.
- *Budgetary Cost.* The budget cost of the credit instrument, given the need to allocate limited Federal resources among competing project applicants.
- *Public-Private Partnerships.* The project's ability to create opportunities for public-private partnerships.
- *Project Acceleration.* The extent to which project completion will be accelerated through the use of credit assistance.
- *Innovative Technologies.* The extent to which the project uses or promotes innovative technologies in enhancing access, mobility, productivity, and safety.

Mr. Grote stated that TEA-21 provides $530 million to cover the subsidy costs associated with the provision of Federal credit assistance under TIFIA (subsidy cost = expected default losses). For example, an average subsidy rate of 10 percent implies a $5.3 billion credit program (face value). The maximum nominal face value of credit is capped at $10.6 billion.

Mr. Grote said that TIFIA offers three types of assistance to project sponsors (direct loans, loan guarantees, and standby lines of credit). Direct loans and loan guarantees provide permanent construction financing to projects, while standby lines of credit provide a contingent source of junior Federal loans during the ramp-up phase. DOT continues to explore the feasibility of providing development cost insurance (which was not authorized under TIFIA). Development cost insurance would provide Federal reimbursement to a project sponsor for a portion of the pre-construction development costs in the event the project failed to proceed to construction.

Mr. Grote stated that direct junior-lien loans offered under TIFIA could provide financing of construction costs in a manner that enables loan repayments to coincide with the receipt of revenues rather than adhere to inflexible repayment schedules. The general terms of direct loans provided under TIFIA are:

- The loans offer long-term permanent financing, up to 33 percent of project costs.
- The interest rate on loans will be set at the Treasury rate for comparable-term securities.
- The maximum term of loans is 35 years after project completion, and repayments may be deferred up to ten years.
- The loans will be secured with rate covenants and defined claims on revenues.

Mr. Grote stated that loan guarantees offered under TIFIA could facilitate senior project borrowing by guaranteeing junior loans from institutional investors. He presented the general terms of assistance as they relate to loan guarantees, the second type of assistance offered under TIFIA.

- Loan guarantees are also capped at 33 percent of total project costs.
- The interest rate on guaranteed loans will be negotiated between the borrower and the lender, and interest payments will be taxable.
- The maximum term of guaranteed loans is 35 years after project completion, and repayments may be deferred up to ten years.
- The guaranteed loans will be secured with rate covenants and defined claims on revenues.

As a matter of Federal policy, loan guarantees are generally favored over direct loans. Loan guarantees are viewed as a less intrusive intervention in the market, and could encourage the development of a junior-lien private market over time.

The third, and last, credit mechanism described by Mr. Grote was the standby line of credit. Under TIFIA, standby lines of credit represent contingent loans to help pay debt service, extraordinary repairs, and other costs during the project's ramp-up phase. These contingent loans have the following features:

- They may be in an amount up to 33 percent of project costs.
- They may be drawn down over a ten year period after project completion.
- They must be repaid, with interest, within 25 years after the period of availability.
- The contingent loans will be secured with rate covenants and defined claims on revenues.

He noted that the Federal standby lines of credit provided to the Transportation Corridor Agencies in Orange County, California served as the model for this type of assistance.

Mr. Grote presented Table 1 in order to illustrate the budgetary appeal of TIFIA. Under the current Federal-aid program, the Federal contribution generally may not exceed 80 percent of project costs. If the remaining 20 percent of project costs covered by State, local, and private contributions is induced by the Federal contribution, the resulting leveraging ratio in terms of total investment to Federal contribution is 1.25 to 1. Under TIFIA the Federal share would be limited to 33 percent of costs. Moreover, the budget authority (subsidy cost) for credit instruments would have a fractional scoring charge, perhaps on the order of about $0.10 on the dollar. Together, these two factors could produce a 30:1 leveraging ratio.

Table 1 Leverage Comparison: Grants vs. Credit (Hypothetical Project Cost: $100)

Form of Assistance	Federal Share	Budget Scoring	Budget Cost	Leverage Ratio
Grants	$80.00	$1.00	$80.00	1.25:1
Credit	$33.00	$0.10*	$3.30	30:1

*Estimated; will vary from project to project.

Mr. Grote reviewed the project finance plans for the Alameda Corridor and the San Joaquin Hills Toll Road.

The Alameda Corridor project is comprised of road and rail improvements that, once completed, will consolidate port-related freight traffic onto a 20-mile, high speed, high capacity, and fully grade-separated corridor linking the San Pedro Bay Ports with key transcontinental rail yards near downtown Los Angeles. The $400 million Federal loan is one piece of a complex financial package, and represents slightly less than 20 percent of the funding for the $2.1 billion project. The budgetary cost to the Federal Government for providing the loan was $59 million. That represents an approximate 36 to 1 leveraging ratio.

The direct loan provided to the Alameda Corridor Transportation Authority (ACTA) has the following features:

- The face value of the loan is $400 million.
- The interest rate on the loan is 6.52 percent through project completion and 6.79 percent thereafter.
- The term of the loan is 30 years after project completion, and repayments may be deferred.
- The loan has a junior claim on project revenues.
- The budgetary cost to the Federal Government for providing the loan to ACTA is $59 million.

The San Joaquin Hills Toll Road is a 15-mile, six-lane, limited access highway in southwestern Orange County, California. The key features of the Federal standby line of credit provided to the Transportation Corridor Agencies (TCA) are as follows:

- The Federal standby line of credit provides up to $120 million in order to help pay debt service, costs of extraordinary repair and replacement, costs of complying with unexpected Federal or State environmental restrictions, operating and maintenance expenses, and capital expenditures if project revenues are insufficient to cover these costs.
- The Federal standby line of credit is available up to ten years following project completion.
- The maximum terms of the contingent loans are 30 years.
- The interest rate on any draw will be set at the Treasury rate for comparable-term securities.
- The contingent loans will have a junior claim on project revenues.
- The Federal standby line of credit for the $1.46 billion facility was provided at a $9.6 million budgetary cost to the Federal Government, representing a 152:1 leveraging ratio.

Mr. Grote stated that Federal credit assistance can improve investor acceptance of creditworthy projects, thus lowering financing costs. Federal credit also consumes significantly fewer budgetary resources than grants, thus freeing grant funds for non-revenue projects. He concluded his presentation by noting that DOT is establishing an equitable process to address national needs and ensure a secure Federal credit portfolio.

Discussion

Mr. Grote moderated a discussion of TIFIA. The discussion focused on program implementation, the project application process, project evaluation and selection criteria, and project financial requirements. A sample of questions already received from the public was handed out in order to generate comments and additional questions (See Appendix E).

Mr. Grote began the discussion by noting that the Federal-aid Financial Management Division of FHWA is currently coordinating the implementation of TIFIA because it is responsible for establishing financial policies for Title 23 programs. TIFIA was codified in Chapter 1 of Title 23. FHWA will be coordinating the implementation process with representatives from other DOT modal agencies, in particular the Federal Railroad Administration (FRA) Federal Aviation Administration (FAA) and Federal Transit Administration (FTA).

Mr. Grote stated that formal rulemaking will be required for TIFIA. The typical formal rulemaking process is difficult, and often can take up to 18 months. However, TIFIA could operate under an interim final rule in fiscal year 1999. The current work plan entails issuing interim guidelines along with a preliminary rule in April 1999 and a final rule by September 1999.

An audience member commented that projects seeking assistance under a number of State and Federal programs could be required to complete many sets of applications. Will there be any attempt to coordinate the application process under TIFIA with the information requirements for other programs?

Mr. Grote responded that the Federal Government is sensitive to this issue. DOT will work with State officials to streamline the application process as practicable.

Ms. Kim Burke, Ernst & Young, added that any applications prepared for SIB assistance should be included in any package submitted to DOT for Federal credit assistance.

An audience member asked about the use of local entities, such as SIBs, as financial intermediaries.

Mr. Grote responded that providing a meaningful role for SIBs would have strategic advantages. SIBs could well play an important role in TIFIA as a financial intermediary and local servicer. SIBs could coordinate transportation planning and financing requirements and provide loan monitoring information.

A member of the audience asked for a clarification on the timing of the $530 million in budget authority for TIFIA.

Mr. Grote responded that the $530 million in budget authority would be spread out over the life of the Transportation Equity Act for the 21st Century (TEA-21). TEA-21 provided $80 million in budget authority for TIFIA in FY 1999, $90 million in FY 2000, $110 million in FY 2001, $120 million in FY 2002, and $130 million in FY 2003.

An audience member commented that complicated projects with complex finance plans often require substantial Federal funding. Does the 33 percent cap on Federal credit assistance represent the only limit on Federal funding, or is there a limit on all forms of Federal assistance for projects seeking assistance under TIFIA?

Mr. Grote responded that an underlying premise of TIFIA is that the Federal

Government be a minority share investor. Therefore, as a policy matter, the combination of Federal loans and grants should not exceed 50 percent of total project costs.

A member of the audience noted that legislation indirectly addresses the issue of Federal involvement by stating that one of the criteria for judging projects is the extent to which Federal credit assistance reduces grant amounts below the typical 80 percent maximum amount. For example, transit projects may seek to reduce the Federal grant exposure to 50 percent. Due to the complicated nature of project finance it may make more sense to rely on identified selection criteria rather than establish upper limits on Federal assistance. Perhaps, the desired 50 percent policy threshold could be measured as the sum of all Federal grants plus the subsidy costs associated with the provision of Federal credit.

A member of the audience stated that there may be projects that apply for assistance under both TIFIA and the Railroad Rehabilitation and Improvement Financing Program (RRIF). Are the two programs on the same implementation track?

Ms. JoAnne McGowan, FRA, responded that both private and public entities are eligible for assistance under RRIF. Thus, there will be some overlap between the two Federal credit programs. Highway/railroad grade separation projects provide a good example. Both Federal credit programs are currently developing implementation guidelines, and both have retained Ernst & Young to assist in program implementation. However, the unique feature of credit risk premiums being paid from non-Federal sources may add time to the approval of regulations for RRIF.

A member of the audience asked if, under TIFIA, DOT would provide multi-year commitments to project sponsors.

Mr. Grote responded that Congress did provide multi-year contract authority to fund TIFIA. The multi-year contract authority provided by Congress allows program budget authority to remain available until expended.

The budget authority will be used to cover the estimated long-term costs to the Federal Government of providing credit assistance under the program. There are, however, annual limits on the principal amount of Federal credit which may be available for obligation. These credit limits do not carry over from year to year. Given these factors, DOT will need to carefully examine the feasibility of long-term commitments to projects in order to ensure that project demands for capital are well served by the program.

An audience member stated that projects seeking assistance under TIFIA will likely obtain multiple forms of Federal grant and credit assistance. How does FHWA plan to coordinate the project application process with other modal agencies? Mr. Grote replied that perhaps DOT could establish a project-specific review process that would involve representatives from FHWA, FTA, FRA, and other modes. A project-specific review process would improve coordination among the modes.

An audience member commented that there may be some risk that projects will not be funded in FY 1999 unless DOT establishes a streamlined process for reviewing applications and selecting projects.

Mr. Seltzer responded that DOT recognizes the need to operate under an interim final rule and a streamlined process during FY 1999. DOT plans to issue interim guidelines and an interim final rule in April 1999.

An audience member asked for a clarification of the guideline development process.

Would it be possible for FHWA to issue preliminary guidelines before the interim guidelines are finalized in April?

Mr. Steve Rochlis, Attorney, FHWA, responded that TIFIA will need to operate under an interim rule for two reasons. First, the program's budget authority exceeds the $100 million threshold. Second, DOT anticipates that the Office of Management and Budget (OMB) will raise a number of issues and concerns, and provide a number of comments during program implementation. However, the project review process could be established as soon as the interim final rule is issued.

An audience member asked for clarification on the preliminary rating requirement for projects applying for assistance under TIFIA.

Mr. Seltzer responded that the Alameda Corridor project provided two preliminary credit assessments before negotiating their loan agreement with DOT. Generally, the credit assessment provides an early indication of a project's financial feasibility, and may include a number of caveats or a list of assumptions that must be made in order for the project to receive an investment grade rating.

A member of the audience asked for a definition of the minimum market rating that a project must obtain when seeking assistance under TIFIA.

Mr. Seltzer responded that a project receiving assistance under TIFIA must obtain an investment grade rating of BBB- or better from a nationally recognized rating agency.

A member of the audience asked how many investment grade ratings a project would need to secure in order to obtain assistance under TIFIA.

Mr. Seltzer responded that one rating from a nationally recognized rating agency was all that was required.

A member of the audience stated that State Infrastructure Banks (SIBs) also offer credit assistance to revenue-backed projects through revolving loan funds. What role could SIBs play in providing credit assistance to the projects of national significance targeted by TIFIA?

Mr. Grote responded that there is potentially a role for SIBs to play as local servicers for projects receiving assistance under TIFIA. However, SIBs will require a number of years to buildup sufficient resources to gain access to external funding. Consequently, SIBs are best suited to assist portfolios of relatively smaller, shorter-term, local and regional projects.

A member of the audience asked if private entities could apply for assistance under TIFIA.

Mr. Grote responded that both public and private entities are allowed to apply for assistance under TIFIA. However, projects must meet governmental eligibility and compliance requirements and will be evaluated based in part on the extent to which they generate regional or national public environmental and economic benefits that exceed costs.

A member of the audience asked whether DOT would be willing to provide project sponsors with contingent commitments which identify projects for funding but outline actions that must be taken before DOT would sign the loan agreement.

Mr. Grote responded that the project application, review, and selection process under TIFIA will most likely involve two steps. DOT will likely make preliminary decisions, followed by negotiations and final project acceptance.

Ms. Burke added that Federal credit programs generally establish systems whereby preliminary commitments are made to projects before final loan agreements are signed.

A member of the audience asked for a definition of an ITS project. How will the project review team define eligibility for the lower $30 million cost threshold established for ITS projects?

Mr. Grote responded that the definition may be established in the rulemaking process, and may rely on the eligibility definition provided for ITS projects under Title V of TEA-21.

An audience member stated that Congress established an obligation ceiling under TEA-21. By placing a ceiling on obligations, Congress indirectly controls future cash outlays. How does the obligation limit established under TEA-21 affect funding levels under TIFIA?

Mr. Grote responded that the obligation limitation established by Congress under TEA-21 probably reduces TIFIA's budget authority by 10 percent annually.

An audience member asked for a clarification on when an obligation will be deemed to have taken place under TIFIA.

Mr. Grote responded that the funds are legally committed once DOT signs the loan agreement.

Mr. Rochlis added that FHWA generally obligates funds when the Federal Government becomes legally obligated to make a grant or a loan. That legal obligation takes place when DOT signs the loan agreement.

A member of the audience asked if a Federal standby line of credit under TIFIA could be used in connection with tax-exempt bonds.

Mr. Grote responded that the Federal line of credit has been an issue of considerable debate. The debate has focused on whether a Federal standby line of credit would constitute an implicit guarantee of capital markets debt. If the answer is yes, it could jeopardize the tax-exempt status of a project's senior debt. Recent experience with Federal lines of credit for two toll roads in southern California suggests that broadening the purpose for which the line may be drawn upon can be sufficient to enable bond counsel to render an unqualified opinion as to the tax-exempt status of a project's senior debt.

An audience member asked for a definition of publicly-owned projects.

Mr. Rochlis responded that a project is generally considered to be publicly owned if a governmental entity holds a controlling interest in the project (i.e., greater than 50 percent ownership).

An audience member asked for a clarification on how funding under TIFIA would affect States' Federal-aid obligation authority?

Mr. Grote responded that credit assistance under TIFIA would have no impact on annual funding levels for other Federal-aid programs (e.g., Surface Transportation Program, Congestion Mitigation and Air Quality Program, and National Highway System Program) identified in TEA-21. Annual Federal-aid apportionments will not be reduced for States receiving assistance under TIFIA.

A member of the audience stated that, as a technical matter under TIFIA, the only project type that is required to be publicly owned is an intermodal facility. Why does this requirement only apply to intermodal facilities, which often involve private interests?

Mr. Grote responded that to be eligible for assistance under TIFIA, projects must generate significant public benefits. The concern with privately owned intermodal freight facilities is that the credit assistance would primarily benefit private entities.

An audience member stated that it will be important for the Federal Government to guard confidential project information when processing applications for Federal credit assistance.

Mr. Rochlis responded that draft agreements, applications, and other project-related materials would not be released before a loan agreement is signed. Once the loan agreement is signed, however, all the documents are considered public information, unless the project sponsor can demonstrate that releasing the documents would place it at some sort of competitive disadvantage. That, however, can be a difficult argument to make.

An audience member asked if States would be held liable for projects that defaulted on loans provided under TIFIA.

Mr. Grote responded that States would not be held liable for losses experienced under TIFIA. For example, the Federal Government would not reduce future Federal-aid funding to States where project defaults take place.

A member of the audience stated that the interim guidelines should establish a timeline for accepting and approving project applications under TIFIA. Will applications be accepted and reviewed on a rolling basis, or will DOT select projects and allocate funds only once each fiscal year?

Mr. Grote responded that although DOT wants to be responsive to projects' capital needs, the equitable allocation of limited program funding may require application reviews and funding approvals at fixed periods instead of on a rolling basis.

An audience member stated that DOT may want to consider accepting applications year round, on a rolling basis, in order to avoid a large volume of applications immediately prior to deadlines.

Mr. Grote concluded the session by stating that he welcomed participants to provide additional input to DOT in the coming months, and that the proceedings from this focus group would be published in November.